



Tyngsborough Board of Health

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TOWN OF TYNGSBOROUGH **TOBACCO REGULATIONS**

ADOPTED SEPTEMBER 14, 1998

AMENDED FEBRUARY 11, 2002

AMENDED January 8, 2007

REGULATIONS AFFECTING SMOKING AND THE SALE, VENDING AND **DISTRIBUTION OF TOBACCO IN TYNGSBOROUGH**

SECTION 1 - AUTHORITY

The Board of Health of the Town of Tyngsborough pursuant to the authority granted under Massachusetts General Laws (M.G.L.), Chapter 111, Section 31 hereby adopts the following regulations to protect the public health of the community. It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(2)(j) which states in part that “(n)nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any law or health regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or political subdivision of the commonwealth.”

SECTION 2 - FINDINGS AND PURPOSE

There exists substantial evidence that tobacco smoke causes cancer, heart disease and various lung disorders. Increasing evidence further demonstrates that the harmful effects of tobacco smoke are not confined to smokers, but also cause severe discomfort and in some cases grave illnesses to non-smokers. Therefore, these regulations are adopted pursuant to Massachusetts General Laws, Chapter 111, Section 31, as health regulations in the interest of and for the preservation of the public health.

SECTION 3 - DEFINITIONS

As used in this regulation:

Adult Only Establishment: Any establishment which prohibits minors from entering at all times.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

Designated Smoking Area: An enclosed area designated and posted by the proprietor(s) or his or her agent, in which smoking is permitted. Said area shall not be an area where non-smokers must have access including private offices.

Employer: Any individual, or other organized group of individuals, including the Town of Tyngsborough or any agency thereof, which regularly uses the services of one (1) or more employees.

Employee: Any individual who performs services for an employer in return for wages or profit or a volunteer who performs services with compensation.

Enclosed: All space between the floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways).

Food Service Establishment: A place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes, but is not limited to, restaurants and delicatessens that offer prepared food in individual service portions, mobile food units, push carts and supply operations. The term does not include residential kitchens, retail food stores or supply vehicles.

Lodging Home: A dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four (4) or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

Membership Association: A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- i. A society, organization or association of a fraternal nature that operates under the lodge system and having one or more affiliated chapters or branches incorporated in any state; or
- ii. A corporation organized under Massachusetts General Laws Chapter 180;
- iii. An established religious place of worship or instruction in the Town of Tyngsborough who's real or personal property is exempt

- from taxation; or
iv. A veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one or

More affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition unless individual membership is required for all the members of the association for a period of not less than ninety (90) days.

Minor: Any person less than eighteen (18) years of age.

Non-smoking Area: Any area that is designated and posted by the proprietor or his or her agent as a place where smoking by patrons, employees or others is prohibited.

Outdoor Space: An outdoor area open to the air at all times and can not be enclosed by a wall or side covering.

Proper Ventilation: Separate ventilation directly to the outside in which no air recirculates through the building ventilation system. The area shall be under negative pressure so as to reduce air from escaping into other areas which may be accessed by non-smokers. The ventilation rate in this area shall conform to the current ASHRAE American Society of Heating, Refrigerating and Air-Conditioning Engineers), or other generally accepted standard for venting a smoking lounge approved by the Tyngsborough Board of Health.

Public Building: Any enclosed, indoor area that is located in a building owned or occupied by any department or agency of the Town of Tyngsborough, or any political subdivision thereof.

Public Place: An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: auditoriums, licensed child care locations during hours of operation, schools, clinics, hospitals, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, permanent food permit licensees, indoor sports arenas, public transit facilities, enclosed shopping malls, hotel and motel lobbies, stairwells, hallways, entrances, public rest rooms, elevators accessible to public, common areas in privately owned buildings, and rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Public Transportation Conveyance: A vehicle or vessel used in mass public transportation or in the transportation of the public including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger buses or vans used regularly to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or another vessel, shall not be considered a public transportation conveyance.

Residence: The part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin or cottage, a residential unit in a governmental public housing facility, and the residential portions of a school, college, or university dormitory or facility. A residential unit provided by and employer to an employee at a place of employment shall be considered to be a residence if the unit has an enclosed indoor space used exclusively as a residence and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes

of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

Restaurant: Any establishment serving food for consumption on the premise that maintains tables for the use of its customers. This category includes cafeterias in the workplace.

Retail Food Establishment: Any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premises consumption.

Retail Store: Any establishment selling goods, articles or personal services to the public.

Tobacco Store: Any establishment selling cigarettes, cigars, pipe tobacco, chewing tobacco, snuff or tobacco in any of its forms.

Seating Capacity: That capacity designated on the occupancy permit of a restaurant as determined by the Tyngsborough Building Inspector.

Self Service Display: Display for which individual packs or cartons of tobacco products may be selected by an individual or person.

Smoking: The lighting of any cigar, cigarette, pipe or other tobacco product or having the possession of any lighted cigar, cigarette, pipe or other tobacco product.

Tobacco Vending Machine: Any machine or device designated for or used for the vending of cigarettes, cigars or other tobacco products upon the insertion of coins, currency, trade checks or slugs.

Workplace: Includes, but is not limited to, an enclosed area in which one (1) or more employees perform services for their employer. It also includes private offices, individual work stations and all common areas including rest rooms, conference rooms, hallways, stairways and entrance ways.

SECTION 4 - PROHIBITION OF SMOKING IN PUBLIC PLACES

(4.1) The Board prohibits smoking in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafés, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, “smoking bars” as defined in MGL Ch 270, S.22, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meal tax on the purpose; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in MGL Ch 112, S.9C, group child care center, school age child care center, school age day or overnight camp building, recreational field, beach, or on premises where activities are licensed under MGL Ch 10 S. 38 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

(4.2) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed work space.

(4.3) A person shall not smoke in a municipal building or in a building, vehicle, or vessel owned, leased, or otherwise operated by the Town of Tyngsborough or in a space occupied by the Town of Tyngsborough which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in MGL Ch 30A, S.11A, Ch 34 S. 9F, Ch 30, S.23A, or in a courtroom or courthouse.

(4.4) - Hotel/Motel/Inn Rooms Rented to Guests

Smoking rooms may be designated by the proprietor(s) or his or her agent of a hotel/motel/inn and may not exceed 25 %of the total rooms licensed for guests. Non-smoking room locations may not be located between smoking rooms. Non-smoking rooms shall be situated as to utilize physical barriers and ventilation systems to minimize the toxic effect of tobacco smoke on non-smokers. Signage at the front desk shall alert customers of the availability of non smoking rooms. Rooms shall be posted as smoking prohibited or smoking permitted.

(4.5) Time-Share Properties

Companies, will sell ownership rights to owners of time-share properties, shall distinguish between smoking and nonsmoking time-share properties. Companies shall disclose to potential buyers whether the unit they are purchasing is a smoking or nonsmoking property and post signs accordingly.

(4.6) - Retail Stores

Prohibition of smoking in public places shall apply to retail stores doing business with the general public.

(4.7) - Schools

It shall be unlawful for any person, including all teaching and non-teaching personnel to use cigarettes, or any tobacco products in any private or public school, on school grounds or school vehicles.

(4.8) Tobacco Stores

Prohibition of smoking in public places shall apply to tobacco stores doing business with the general public.

Smoking is prohibited within a thirty feet on an entranceway accessible to the public.

SECTION 5 - RETAIL SALE OF TOBACCO PRODUCTS

(A) No person, firm, corporation, establishment or agency shall sell cigarettes, chewing tobacco or other tobacco products in the Town of Tyngsborough unless they have a valid permit from the Tyngsborough Board of Health.

(B) No person or entity selling tobacco products shall allow anyone to sell tobacco products until such employee signs a statement that (s)he has read the Board of Health Regulations.

(C) All self service displays are prohibited within the Town of Tyngsborough except in

adult only establishments as defined in Section 3.

(D) All displays of tobacco products shall be located behind the sales counter and the purchase of tobacco products must be controlled by the employee.

(E) No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than (20) cigarettes.

SECTION 6 - TOBACCO SALES TO MINORS PROHIBITED

(A) In conformance with Massachusetts General Laws Chapter 270, Section 6, no person shall give/sell cigarettes, chewing tobacco, snuff, or other tobacco in any of its' forms to any person who is a minor (under the age of eighteen).

(B) In conformance with state law prohibiting sales to minors (less than eighteen years of age), a copy of Massachusetts General Laws Chapter 270, Section 7, shall be posted conspicuously by the owner or other person in charge. The notice shall be posted at all cash registers where tobacco is sold and shall be posted in such a manner so it may be readily seen by a person standing at or approaching the counter.

(C) Store owners, managers, or other person in charge where cigarettes, chewing tobacco or other tobacco products are sold shall conspicuously post and maintain signs that proof of age is required to determine that a customer is not a minor (under eighteen years of age), to purchase tobacco products.

(D) No retailer shall sell or permit to be sold cigarettes, smokeless tobacco or any other tobacco products to any person younger than eighteen (18) years of age. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age. No such verification is required for any person over the age of twenty-six (26).

(E) No free samples of tobacco or tobacco products shall be distributed in the Town of Tyngsborough to minors less than 18 years of age.

SECTION 7 - TOBACCO VENDING MACHINES/SELF SERVICE DISPLAYS

(A) No person, firm, corporation, establishment or agency shall sell cigarettes, chewing tobacco or other tobacco products from a vending machine in the Town of Tyngsborough unless they have a valid tobacco permit from the Board of Health.

(B) Except as otherwise provided in this subsection, a person or entity may only sell tobacco products in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self service displays.

Exceptions: Vending machines and self service displays that are located in facilities where the retail tobacco products dealer permit holder ensures that no person younger than eighteen (18) years of age is present, or permitted to enter at any time.

(C) All cigarette vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes.

SECTION 8 - OUTDOOR SPACES

If an outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed workspace. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the workspace. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the workspace, the outdoor space shall be considered an extension of the enclosed workspace and subject to this section.

SECTION 9 - SIGNAGE REQUIREMENTS

(A) designated smoking room in a hotel, motel, inn, and bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking; the floor shall be conspicuously designated as smoking at the entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with Section 4.

SECTION 10 - VARIANCE

(A) Written application must be made to the Board of Health for a variance from these regulations.

(B) Every variance is subject to a public hearing. Notice of a hearing upon an original application for a variance shall be posted as part of a public notice of the Board of Health meeting, at which the Board of Health will consider the application. The notice shall be posted no less than one week before the meeting.

(C) By vote of a majority of its full authorized membership, the Board of Health may vary the application of any provision of these regulations with respect to any particular case in which in the Board's opinion, both of the following requirements is fulfilled.

1. The enforcement of the regulations would do manifest injustice; and
2. The applicant has provided that the degree of protection of the public health, safety and welfare can be achieved without strict application of the particular provision. The alternative means of protection shall be detailed and documented by the applicant to the satisfaction of the Board.

(D) Any variance granted by the Board shall be in writing.

(E) A variance may be granted for up to one year and extended for like periods upon submission of a renewal application.

(F) A copy of the variance granted under this section shall be available for public inspection on the premises for which it is issued.

SECTION 11 - PENALTIES/ENFORCEMENT

A. Workplace Smoking

An individual or person who violates this regulation by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100.00 for the first violation, \$200.00 for the second violation, and \$300.00 for each subsequent violation.

(1) Any owner, manager, proprietor, business owner or his or her agent in charge of an establishment, vehicle, or vessel covered by this regulation, in charge of the operation of a tobacco vending machine, or the sale of tobacco product who fail(s) to comply with this regulation shall be subject to: a fine of two-hundred dollars (\$200.00) for each day of violations. Any establishment that receives three (3) violations in a two (2) year period of time shall be subject to suspension of any license(s) issued by the Board of Health for that public place for a period of up to ten (10) days for each day of noncompliance. The Board of Health will send notice of the suspension or revocation to the Department of Public Health.

(2) Each calendar day on which a violation occurs shall be considered a separate offense.

(3) Any employee who sells to a minor is also subject to a fine of two hundred dollar (\$200.00) per offense.

(4) For violations of this regulation other than by smoking in a place where smoking is prohibited, as an alternative to criminal prosecution, such violations may also be considered civil violations. Each enforcing agency shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in M.G.L. Ch. 40. S 21D without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to M.G.L. Ch. 111 S. 188.

(5) The Tyngsborough Board of Health shall report annually to the Commissioner of Public Health beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines.

(6) In addition to the remedies provided by Section 11 1, 3, and 5, the Board of Health or any person aggrieved by the failure of the proprietor or his or her agent of a place covered by these regulations to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court or competent jurisdiction.

(7) The Board of Health or its enforcement officer will enforce the enactment of this regulation.

B. SALES TO MINORS

(1) Any proprietor(s) or other person(s) in charge of a place covered by these regulations (and/or) in charge of the sale of tobacco products who fail(s) to comply with Sections 5,6, and 7 of this regulations shall be subject to a fine of three hundred dollars (\$300.00) for each day of violations. Any establishment that receives three violations in a two year period of time will have the permit

to sell tobacco suspended for that public place for a period of up to ten days for each day of noncompliance.

(2) Any employee who sells tobacco, smokeless tobacco, or any other tobacco products to a minor is subject to a fine of two hundred dollars (\$200) per offense. This penalty is in addition to the penalty that may be imposed in Section 11, B (1).

(3) Any person can register a complaint to initiate an investigation and enforcement with the Board of Health.

(4) Pursuant to MGL Ch 270, S22, the supreme judicial court or the superior court shall issue appropriate orders to enforce this regulation at the request of the enforcing agency.

(5) The Tyngsborough Board of Health shall provide notice of the intent to suspend any permit it issues, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and the reasons therefore in writing. If the Tyngsborough Board of Health, after a hearing, suspends a tobacco sales permit, all tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of the regulation.

SECTION 12 EXEMPTIONS

Notwithstanding Section 4, smoking may be permitted in the following places and circumstance

(1) Private residences; except during such time when the residence is utilized as part of a business as a group child care center, school age day care center, school age day or overnight camp, or a facility licensed by the Office of Child Care Services or as a health care related office or facility.

(2) Premises occupied by a membership association if the premises is owned, or under a written lease for a term of not less than ninety (90) consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

- a. open to the public; or
- b. occupied by a non-member who is not an invited guest of a member or an employee of the association; or
- c. rented from the association for a fee or other agreement that compensates the association for the use of such space.
- d. Membership associations must provide proper ventilation as defined in Section
- e. Smoking may be permitted in an enclosed indoor space of a membership association at all times if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of the membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection. Membership associations must provide proper ventilation as defined in Section 3.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to Section 4 of this regulation;

(4) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of the theatrical production, and if permission has been obtained from the Tyngsborough Board of Health;

(5) By a person organization, or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the Department of Public Health;

(6) Religious ceremonies where smoking is part of the ritual; and

(7) A tobacco manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes if the smoking is necessary to conduct the test.

SECTION 13 - OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

SECTION 14 - SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 15 CONFLICTS WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health, or other regulations so as to permit smoking in areas where it is prohibited by such fire, health, or other regulations.

SECTION 16 - EFFECTIVE DATE

This regulation shall be in effect as of January 8, 2007

Carol Devanney, Chairman

Sheila Perrault

Virginia Day

Carol Ryan

Nanci-Dowling Meehan

Date: